

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

**3:12cv327-V
(3:97cr23)**

THIS MATTER is before the Court upon habeas counsel's oral motion, made during a sealed hearing on September 17, 2012, for an order directing the government to produce information in the above-captioned case.

During a status conference held on September 17, 2012, Henderson Hill and Jake Sussman appeared on behalf of Petitioner Aquilia Marcivicci Barnette. Prior trial counsel for Barnette, Harold Bender, was also present. During the status conference, it was confirmed that all of the attorneys who had represented Barnette in his underlying capital trial and sentencing proceedings (3:97cr23) had transferred their case files to Mr. Bender, and that Mr. Bender had been unable to locate any trial counsel files from the underlying capital case. Among other things, trial counsel files in this matter contained, *inter alia*, discovery provided by the government, as well as correspondence between counsel for the government and counsel for Barnette.

Habeas counsel argued, and the Court agrees, that counsel need these materials to assist Barnette in the preparation of a Motion to Vacate, Set Aside or Correct Sentence, 28 U.S.C. §

2255. Moreover, counsel has demonstrated to the Court's satisfaction that they have made diligent, but unsuccessful, attempts to obtain this information by other means.

IT IS, THEREFORE, ORDERED that counsel's oral motion made during the sealed September 17, 2012 hearing is **GRANTED**.

IT IS FURTHER ORDERED that no later than November 5, 2012, the United States Attorney for the Western District of North Carolina shall provide Barnette's habeas counsel the following information:

1. A complete copy of all material previously provided by the United States Attorney to Barnette's prior trial counsel (including the Mecklenburg County Public Defender's Office, Paul Williams, George Laughrun, James Cooney, Jean Lawson, Claire Rauscher, and Harold Bender) in criminal case 3:97cr23, including, but not limited to, all discovery materials (*e.g.*, offense reports, witness statements, crime scene reports, prior criminal history, autopsy reports, photographs, audio recordings, expert reports, experts' raw data, materials maintained by "firewalled" prosecutors, etc.). The United States Attorney shall identify how and when any such material was previously provided, including the date(s) and method(s) by which the information was provided to Barnette's prior counsel. If such material was date-stamped or otherwise marked when originally provided to Barnette's prior counsel, or provided in a particular order or sequence, the United States Attorney shall indicate accordingly.
2. A complete copy of all correspondence and/or communications, including, but not limited to, letters, faxes, e-mails and notes, between prosecutors in the United States Attorney's Office and prior counsel for Barnette.

The Clerk of Court is directed to send a copy of this Order to Anne M. Tompkins, United States Attorney for the Western District of North Carolina, United States Attorney's Office, 227 W. Trade St., 1700 Carillon, Charlotte, NC 28202, anne.tompkins@usdoj.gov.

SO ORDERED.

Signed: October 5, 2012



Richard L. Voorhees
United States District Judge

